

**Plaintiff
Jackie Fisher's**

**Response in Opposition
to Defendants'**

**Motion for
Summary
Judgment**

EXHIBIT

42



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UTMB HANDBOOK OF OPERATING PROCEDURES

Section 3 Subject 3.10	Human Resources Policies Discipline and Discharge	04/01/90 -Originated 01/25/06- Reviewed w/ changes -Reviewed w/o changes Human Resources - Author
Policy 3.10.1	Discipline and Dismissal	

Discipline and Dismissal

Audience	The information in this document applies to all employees with the exception of: <ul style="list-style-type: none"> <input type="checkbox"/> university police, faculty, teaching staff, or house staff who are subject to other approved discipline or dismissal procedures <input type="checkbox"/> employees who are put on approved administrative leave pending an investigation of allegations <input type="checkbox"/> employees who are not reappointed to positions which are for a stated period of one year or less and which expire at the end of such period without the necessity of notice of non-renewal as provided in the Board of Regents' <u>Rules and Regulations</u>; or <input type="checkbox"/> employees who are appointed to positions without fixed term and, under applicable rules or regulations, serve at the pleasure of the President of UTMB; who occupy positions that are dependent upon funding from specific sources and such funding is not received; as a result of a reorganization or reduction in force; because of financial exigency (<i>i.e.</i>, need); during the six months probationary period; or who are appointed at a <i>per diem</i> or hourly rate and work on an as-needed basis
Policy	<p>All employees are expected to acquaint themselves with performance criteria for their particular job and with all rules, procedures, and standards of conduct established by the Board of Regents of the University of Texas System, UTMB, and the employee's department or unit.</p> <p>An employee who does not fulfill the responsibilities set out by such performance criteria, rules, procedures, and standards of conduct may be subject to adverse disciplinary action.</p> <p>While it is impossible to anticipate and address every situation which might occur in an employment relationship, this policy provides guidelines to promote consistency. It is recognized, however, that there is no substitute for good judgment, and managers should consider any special circumstances prior to making a final decision in any given situation. This progressive corrective approach considers</p>

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Policy, continued

the severity of each situation, recognizing that problems of a more severe nature may be addressed at a more advanced level, including termination for misconduct or failure to perform.

Factors which should be considered when determining the level of action include:

- specific facts of situation
- impact of the behavior on UTMB and those it serves
- employee's length of service with UTMB
- employee's overall work record with UTMB, including the relevancy and recency of past corrective action
- previous discipline for similar behavior/performance

Members of management are expected to provide a comprehensive orientation for all employees entering their work group, clear directions and expectations, including why it is important to demonstrate competencies which support and advance our vision and values, and coaching to correct problems before holding formal performance communication discussions. Employees should know about all issues and concerns and be given the opportunity to correct the problem where appropriate before moving to other steps.

It is required that supervisors review any decision to discharge or suspend an employee with the director responsible for that department. In addition, it is required that a member of the Human Resources staff be consulted to assist management in reviewing the circumstances of any contemplated discharge or suspension prior to the time such action is taken to ensure consistency for all like or similar under like or similar circumstances.

Levels of Action

When formal corrective action is necessary, the following steps are to be used:

A) Verbal Reminder

A verbal reminder is normally used for minor violations of UTMB policies and for failure to achieve competencies

B) Written Reminder

a written reminder is issued for:

- a second minor violation within a six month period
- chronic minor violations, regardless of timeframe

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- first-time occurrences of more serious violations
-

**Levels of Action,
continued**

- continued failure to achieve competencies

C) Depending on the circumstances of the violation and management's assessment of what may be most effective in changing behavior, one of the following forms of corrective action may result:

- 1) **Written Final Reminder** clearly indicating that the next step is discharge if behavior is not rectified or
- 2) **A Decision Making Day (DMD)**
Consisting of one day away from work site with pay.
On this day, the employee must;
 - meet with Employee Assistance Program (EAP) staff if necessary
 - consider the issues and problems which have resulted in this action
 - decide whether he/she is committed to meeting UTMB's expectations and performance standards
 - complete a written action plan which outlines the steps the employee will take in order to achieve the expected standards of performance
- 3) **A Corrective Suspension** in which the employee is sent home without pay for one or more days. (May only be used with HR approval for serious misconduct.)

D. Termination

Employees may be discharged who:

- do not correct their behavior or fail to achieve competencies at anytime within the six month period following a Final Written Reminder
- refuse to commit to UTMB's standards and to develop an action plan during a decision making leave
- commit a first time violation of serious misconduct
- failure to report fraud

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**Conduct Which
is Subject to
Disciplinary
Action****Work Performance**

Failure of an employee to maintain satisfactory work performance standards constitutes good cause for disciplinary action which may include dismissal. The term "work performance" includes all aspects of an employee's work.

- work performance is judged by the supervisor's evaluation of the quality and quantity of work performed by each employee
- when, in the opinion of the supervisor, the employee's work performance is below standard, the supervisor should take appropriate disciplinary action

Misconduct

All employees are expected to maintain standards of conduct suitable and acceptable to the work environment. Disciplinary action, which may include dismissal, may be imposed for unacceptable conduct.

Examples of unacceptable conduct, as applicable, include but are not limited to:

- falsification of time sheets, personnel records, or other institutional records
- neglect of duties, or wasting time during working hours.
- misappropriation of state resources
- improper use or disclosure of a patient's Protected Health Information (PHI)
- improper storage, copying, printing, and disposal of PHI
- smoking (except in designated areas in TDCJ facilities, smoking is prohibited in the TDCJ hospital)
- gambling, including participation in lotteries or any other games of chance on the premises at any time
- soliciting, collecting money, or circulating petitions on the premises other than within the rules and regulations of UTMB
- bringing intoxicants or drugs onto the premises of UTMB, using intoxicants or drugs, having intoxicants or drugs in one's possession, or being under the influence of intoxicants or drugs on the premises at any time
- disregard for or failure to adhere to established internal controls
- abuse or waste of tools, equipment, fixtures, property, supplies, or goods of UTMB

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- creating or contributing to unhealthy or unsanitary conditions
 - failure to comply with federal healthcare program requirements
 - failure to report noncompliance with federal healthcare program requirements
 - failure to report possible wrongdoing or suspected violations of applicable federal and state laws and regulations
 - intentional misrepresentation of services on claims submitted to any third-party payer and/or patient
-

**Conduct Which
is Subject to
Disciplinary
Action,
continued**

- violations of safety rules or accepted safety practices
- failure to cooperate with a supervisor or co-worker
- impairment of function of work unit, or disruptive conduct
- disorderly conduct, horseplay, harassment of other employees (including sexual harassment, See Policy 3.2.4, *Sexual Harassment*), or use of abusive or profane language on the premises
- fighting, encouraging a fight, or threatening, or attempting to cause or causing injury to another person on the premises
- neglect of duty or failure to meet a reasonable and objective measure of efficiency and productivity
- theft, dishonesty, or unauthorized use of UTMB property including records and confidential information
- creating a condition hazardous to another person on the premises
- destroying or defacing UTMB property or records or the property of a student or employee
- refusal of an employee to follow instructions or to perform designated work that may be required of an employee or refusal to adhere to established rules and regulations
- repeated tardiness or absence, absence without proper notification to the supervisor or without satisfactory reason, or unavailability for work.
- being listed as excluded, debarred, suspended, or ineligible to participate in federal or state programs/violation of policies or rules of UTMB or the University of Texas System.
- Improper use or disclosure of social security numbers

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TDCJ

In order to comply with security requirements, UTMB employees assigned to Correctional Managed Care (CMC) are subject to the same standards of conduct as TDCJ employees as well as UTMB Policies, when working in a correctional facility. Specific examples of unacceptable conduct in TDCJ correctional facilities may be obtained from the Director of Human Resources for Correctional Managed Care or designee.

Procedure

All incidents that involve the potential for disciplinary action shall be investigated by the employee's supervisor or other designated administrative official. If the investigation results in evidence that establishes with reasonable certainty that the employee engaged in conduct which warrants demotion, termination or suspension, the supervisor shall follow the predisiplinary hearing procedures.

Predisiplinary Hearing

An employee shall be informed of the basis for any proposed disciplinary action which may result in demotion, suspension without pay, or dismissal and have an opportunity to respond before a final decision is made to take disciplinary action. The hearing serves as an opportunity to avoid mistaken decisions to impose discipline and is not intended to definitely resolve the propriety of the disciplinary action being considered.

There is no prescribed form for a pre-disciplinary hearing. It should be informal. However, before reaching a final decision to impose discipline, the supervisor shall:

- inform the employee, in writing, of the reasons for the proposed disciplinary action, the facts upon which the supervisor relies, the names of any persons who have made statements about the disciplinary incident, and the content of such statements
- give the employee access to any documentary material which the supervisor has relied upon
- give the employee an opportunity to respond to the charges either orally or in writing within a reasonable time and to persuade the supervisor that the evidence supporting the charges is not true

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**Predisciplinary Hearing,
continued**

If the employee fails to persuade the supervisor that the evidence is untrue, the supervisor shall review the evidence and proposed disciplinary action with a Human Resources representative, the Director of Human Resources for Correctional Managed Care employees, or designee and will obtain approval of the appropriate department head or administrative equivalent before proceeding to impose the disciplinary penalty.

Imposing the Disciplinary Penalty**Notice**

Upon completing pre-disciplinary hearing procedures and obtaining the approval of the appropriate department head or administrative equivalent, the supervisor shall inform the employee in writing of the following:

- the specific incident, conduct, course of conduct, unsatisfactory work performance, or other basis for the disciplinary penalty
- any previous efforts to make the employee aware of the need to change or improve work performance or conduct
- reference to any relevant rule, regulation, or policy
- whether the disciplinary penalty is demotion, suspension without pay, or dismissal
- the effective date if demotion or dismissal is imposed
- the specific period for a suspension without pay if applicable, not to exceed one month (i.e., 30 calendar days)
- the appeal process (see IHOP Policy 3.10.2, *Appeal Policy*).
<http://www.utmb.edu/policy/ihop/search/03%2D10%2D02.pdf>

Effect Upon Employee Benefits

An employee who is demoted or suspended without pay continues to accrue vacation and sick leave, to be covered by group insurance, and to be entitled to other employee benefit programs.

If a demotion or suspension without pay is appealed, in accordance with the *Appeal Policy*, and it is determined that there was not good cause for the demotion or suspension, the employee shall be entitled to payment for wages lost as a result of demotion or suspension.

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Effect Upon Employee Benefits, continued

If it is determined upon appeal that a dismissal was not for good cause, the employee shall be reinstated to the same or similar position and shall be entitled to payment of back wages less any unemployment benefits received by the employee after the date of dismissal. Employee benefits such as vacation and sick leave shall be credited back to the date of dismissal.

EAP Referral

Any employee who receives a corrective action should be advised of the services available through the Employee Assistance Program. The employee is encouraged to make an appointment with a counselor if such services might be of assistance in dealing with any personal problems which may impact job performance.

References

IHOP Policy 3.10.2, *Appeal Policy*
 IHOP Policy 3.10.3, *Grievance Policy*
45 C.F.R. §164.530(e)(1)

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UTMB Performance Management Matrix

Supervisor Action	Documentation Required	Signature Required	Notification Required	HR Involvement	Time Active	Eligible for Transfer while active?	Appeal/Grievance Possible?
Routine Performance Coaching	Performance Review or routine coaching worksheet	none	none	Advisory if requested	N/A	N/A	N/A
Coaching Poor Performance	f/u Memo or email	None	none	Advisory if requested	N/A	N/A	N/A
DISCIPLINARY ACTION BEGINS HERE							
Oral Reminder	Summary memo after meeting with action plan if necessary	Supervisor	Verbal or email to next level manager	Recommended review	one year	Yes	Grievance possible
Written Reminder	Written memo with action plan	Supervisor & employee	Next level manager	Recommended review	one year	No	Grievance possible
Decision Making Day	Written memo with action plan	Supervisor & employee	Next level manager	Required review	one year	No	Grievance possible
Suspension (misconduct only)	Intent to suspend letter and suspension letter	Supervisor & employee	Next level mgr and dept head	Required review	one year	No	Appeal possible
Termination	Intent to terminate letter and termination letter	Supervisor & employee	Next level mgr and dept head	Required review	N/A	N/A	Appeal possible

Guidelines:

- o All phases of the process are intended to assist employee in meeting performance standards.
- o Coaching must precede formal disciplinary action except in cases of gross misconduct.
- o Suspension or Final Written Warning may only be used in cases of misconduct and must have HR approval.
- o Decision making day will not exceed one day and employee will be assigned the "work" of returning the next morning with a decision about performance.
- o Steps in process may be omitted only when severity of performance justifies. HR must review any situations in which steps are omitted.
- o Employees retain the right to grieve or appeal as provided by applicable Regent's Rules and state law.
- o Verbal reminders are retained in department file for one year.
- o Written reminders go to Employee Records with relevant verbal reminders attached. If no further performance issues arise in one year, a letter is sent to file indicating performance has improved and employee is no longer considered under disciplinary action.

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Policy 3.10.2 Appeal		-Author

Appeal Policy

Audience	This policy applies to all employees, except as shown below, who are demoted, suspended without pay, or dismissed as a result of disciplinary action.
Exceptions	<ul style="list-style-type: none"> <input type="checkbox"/> University Police Officers, as defined in section 1.2.2. of the UT System Police Code of Conduct <input type="checkbox"/> Faculty, teaching staff, or house staff who are subject to other approved discipline or dismissal procedures <input type="checkbox"/> Employees who are suspended with pay pending an investigation of allegations <input type="checkbox"/> Employees who are not reappointed to positions which are for a stated period of one year or less and which expire at the end of such period without the necessity of notice of nonrenewal as provided in the Board of Regents' Rules and Regulations <input type="checkbox"/> Employees who are dismissed: who are appointed without fixed term and under applicable rule or regulation serve at the pleasure of the president of UTMB; who occupy positions that are dependent upon funding from a specific source and such funding is not received; as a result of reorganization; because of financial exigency; during the 180 day probationary period; who are appointed for a started period that is less than 180 days (temporary); or who are appointed at a per diem or hourly rate and work on an as needed basis <input type="checkbox"/> If a probationary, temporary or hourly employee alleges that a dismissal was based on unlawful discrimination, that complaint will be considered pursuant to Grievance Policy 3.10.3
Policy	Disciplinary actions resulting in demotion, suspension without pay, or dismissal may be appealed by the affected individual pursuant to the process set out below.